failed to express their intention perfectly, an erroneous legal liability has been created through mutual mistake. The case therefore is a proper subject for reformation and rescission.[8] Here the use to which parol evidence is put is legitimate — equitable relief based on mutual mistake. The situation is analogous to the cases where a sealed instrument is signed by one partner under mistaken belief that all are thereby bound. Equity will give effect to this intention by reforming the instrument.[9] In a bill for equitable relief, however, stronger proof of the alleged intent of the parties is required than in an action on the contract.[10]

VALIDITY OF TRUST PERFORMABLE OUTSIDE OF JURISDICTION OF ITS CREATION. — Where a testamentary trust is created in one state to be administered in a foreign state, an interesting question at once arises as to which law is to determine the validity of the trust. In the case of realty it would seem that the *lex rei sitae* must govern as in all other cases involving the creation of an interest in land.[1] In a trust of personalty, the validity of the bequest should be determined by the law of the testator's domicile. Thus, where a gift of personalty to a foreign corporation to be invested in land is valid by the *lex domicilii* of the testator, it is not affected by the statute of mortmain of the state of administration.[2] The executor may receive the bequest in the former state; the latter state does not forbid the investment of the money in land. So a testamentary trust, good by the law of the state of its creation, is not invalidated by the fact that in the state where administration is to occur such a trust would be bad for indefiniteness of object.[3] And the result is similar where the trust contravenes the rule against perpetuities of the latter state.[4] Where, however, the trust is too remote by the *lex domicilii* of the testator, it is said that it is not against the policy of that law to allow the creation of a perpetuity abroad, and that therefore the trust is valid if not opposed to the law of the state of administration; and the same may be said as to a trust contrary to the mortmain statutes of the testator's domicile.[5] This result seems based on the assumption that the *lex domicilii* of the testator allows the validity of such a trust to be determined by the foreign law. Where, therefore, the limitation is too remote by both laws, it must certainly be void.

Where an equitable conversion occurs, the question is more intricate. A devise of land on trusts which are invalid by the *lex rei sitae* but accompanied by a direction to sell and invest the proceeds on trusts which are

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[8] See Wake *v.* Harrop, 6 H. & N. 768.

[9] See McNaughten *v.* Partridge, 11 Oh. St. 223; 2 Ames, Cas. Eq. Jur. 220, n. 2. When the Statute of Frauds requires a writing, reformation in conformity with the oral bargain could probably not be obtained under the prevailing English doctrine. See 2 Ames, Cas. Eq. Jur. 299, n. 2.

[10] See Hough *v.* Smith, 132 Ala. 204; 2 Ames, Cas. Eq. Jur. 312, n. 2.

[1] Acker *v.* Priest, 92 Ia. 610.

[2] Canterbury *v.* Wyburn, [1895] A. C. 89.

[3] Handley *v.* Palmer, 91 Fed. Rep. 948; Fellows *v.* Miner, 119 Mass. 541; and see Jones *v.* Habersham, 107 U. S. 174.

[4] Cross *v.* U. S. Trust Co., 131 N. Y. 330; Dammert *v.* Osborn, 140 N. Y. 30.

[5] Hope *v.* Brewer, 136 N. Y. 126; Vansant *v.* Roberts, 3 Md. 119; and see Gray, Rule against Perpetuities, 2d ed., 266.

valid by the law of the place of administration, has been held invalid.[6] But the view now generally prevailing in this country seems to be that such a devise is valid, if immediate and absolute conversion of the property is directed;[7] otherwise not.[8] This seems the more satisfactory result, as it is but another application of the doctrine that the holding of property in a foreign state on remote limitations is not opposed to the law of the domestic state. So a devise of land in Italy to a trustee to sell and invest the proceeds in English land was held valid, even though by the Italian law land could not be held in trust.[9] The result of this case seems questionable in view of the absolute prohibition of all trusts in land by the Italian law, though it may possibly be supported on the theory that a trust obligation, unaffected by Italian law, attaches to the proceeds of the land when sold under the terms of the will. The converse of this, involving the conversion of personalty into realty, is suggested by a recent decision of the New York Court of Appeals. *Mount* v. *Tuttle*, 34 N. Y. L. J. 1375 (N. Y., Ct. App., Jan., 1906). A bequest of personalty on trust to be converted into realty in Utah was held void under the law of Utah for indefiniteness of object, though by the *lex domicilii* of the testator it would have been valid. The result seems right, since land in Utah certainly could not be held on trusts which were illegal in that state.[10]

LIMITATION OF ACTION FOR DEATH BY WRONGFUL ACT. — The stipulation in the statutes giving a right of action for death by wrongful act that action must be brought or notice of claim given within a certain time, is not a mere special statute of limitations affecting the remedy only, but is a substantial condition qualifying the right.[1] As regards the question of when the period begins to run, however, all such stipulations may be included in the general terms "limitations" and "statutes of limitations." The solution of this question is dependent upon the form of the statute involved. Where the statute is so worded as to effect merely a survival of the decedent's tort action for the injury, the limitation must run uninterruptedly from the time of the injury.[2] But the great majority of statutes create an entirely new cause of action.[3] In some instances this new cause of action is given to the widow or children, in which case it seems clear that the limitation must run from the time of the death.[4] But where the personal representative alone is given a right of action, and the statute provides that a certain limitation shall begin to run on the accrual of the cause of action, there is some conflict in the decisions. The New York Court of Appeals recently held, by a divided court, that the limitation begins to run, not at the death of an intestate, but

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[6] Freke *v.* Carbery, L. R. 16 Eq. 461.
[7] Hope *v.* Brewer, *supra*; Ford *v.* Ford, 80 Mich. 42.
[8] Hobson *v.* Hale, 95 N. Y. 588.
[9] *In re* Piercy, [1895] 1 Ch. 83.
[10] White *v.* Howard, 46 N. Y. 144.

[1] Dailey *v.* New York, etc., Ry. Co., 26 N. Y. Misc. 539; Stern *v.* La Compagnie Générale Transatlantique, 110 Fed. Rep. 996.
[2] Sachs *v.* City of Sioux City, 109 Ia. 224; *cf.* Needham *v.* Grand Trunk Ry. Co., 38 Vt. 294, 306.
[3] Pittsburgh, etc., Ry. Co. *v.* Hosea, 152 Ind. 412; see 15 HARV. L. REV. 854.
[4] Western, etc., R. R. Co. *v.* Bass, 104 Ga. 390.